



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2129

Introduced 2/14/2008, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Underground Utility Facilities Damage Prevention Act. Removes "personal representative" from the definition of "person". Contains provisions concerning a joint meet for certain parties. Contains provisions concerning a no show request initiated by an excavator through the State-Wide One-Call Notice System. Contains provisions concerning the initiation of an incomplete request by an excavator. Contains provisions concerning notice of a re-mark request by an excavator. Defines the terms "residential property owner", "designer", "design stage request", and "JULIE Excavator Manual". Removes community antenna television systems from certain requirements concerning nonemergency excavation or demolition, emergency excavation or demolition, and certain records of notice. Adds certain requirements concerning nonemergency excavation or demolition. Contains provisions concerning the use of a joint meet. Contains provisions concerning a design stage request. Contains provisions concerning the requirements after contact is made between the facility owner or operator and the designer. Contains provisions concerning requests of drawings of the job site by the owner or operator. Adds language (1) providing that excavation shall cease in the area of the damage when the damaged facility is a threat to life or property or if otherwise required by law and (2) prohibiting the excavator from engaging in specified activities. Provides that every person that fails to provide notice and willfully fails to comply with other provisions of the Act shall be subject to specified penalties. Contains provisions concerning penalties for owners and operators of underground utility facilities. Makes other changes.

LRB095 16977 MJR 43023 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Underground Utility Facilities
5 Damage Prevention Act is amended by changing Sections 2.1, 2.2,
6 2.6, 4, 6, 7, 10, and 11 and by adding Sections 2.12, 2.13,
7 2.14, 2.15, 2.16, 2.17, 2.18, 2.19, 4.1, 4.2, 4.3, 4.4, 4.5,
8 and 4.6 as follows:

9 (220 ILCS 50/2.1) (from Ch. 111 2/3, par. 1602.1)

10 Sec. 2.1. "Person" means an individual, firm, joint
11 venture, partnership, corporation, association, municipality
12 or other governmental unit, department or agency, utility
13 cooperative, or joint stock association, and includes any
14 trustee, receiver, or assignee ~~or personal representative~~
15 thereof.

16 (Source: P.A. 86-674.)

17 (220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

18 Sec. 2.2. Underground utility facilities.

19 (a) "Underground utility facilities" or "facilities" means
20 and includes wires, ducts, fiber optic cable, conduits, pipes,
21 sewers, and cables and their connected appurtenances installed
22 beneath the surface of the ground by:

1 (1) a public utility as defined in the Public Utilities
2 Act;

3 (2) a municipally owned or mutually owned utility
4 providing a similar utility service;

5 (3) a pipeline entity transporting gases, crude oil,
6 petroleum products, or other hydrocarbon materials within
7 the State;

8 (4) a telecommunications carrier as defined in the
9 Universal Telephone Service Protection Law of 1985, or by a
10 company described in Section 1 of the Telephone Company
11 Act;

12 (5) a community antenna television system, also
13 referred to as "CATS", as defined in the Illinois Municipal
14 Code; and

15 (6) any other entity owning or operating underground
16 facilities that transport generated electrical power to
17 other utility owners or operators.

18 (b) "Underground utility facilities" or "facilities" does
19 not mean underground utility facilities operated by an electric
20 cooperative as defined in the Public Utilities Act.

21 ~~"Underground utility facilities" or "facilities" means and~~
22 ~~includes wires, ducts, fiber optic cable, conduits, pipes,~~
23 ~~sewers, and cables and their connected appurtenances installed~~
24 ~~beneath the surface of the ground by a public utility (as is~~
25 ~~defined in the Illinois Public Utilities Act, as amended), or~~
26 ~~by a municipally owned or mutually owned utility providing a~~

1 ~~similar utility service, except an electric cooperative as~~
2 ~~defined in the Illinois Public Utilities Act, as amended, or by~~
3 ~~a pipeline entity transporting gases, crude oil, petroleum~~
4 ~~products, or other hydrocarbon materials within the State, or~~
5 ~~by a telecommunications carrier as defined in the Universal~~
6 ~~Telephone Service Protection Law of 1985, or by a company~~
7 ~~described in Section 1 of "An Act relating to the powers,~~
8 ~~duties and property of telephone companies", approved May 16,~~
9 ~~1903, as amended, or by a community antenna television system,~~
10 ~~hereinafter referred to as "CATS", as defined in the Illinois~~
11 ~~Municipal Code, as amended.~~

12 (Source: P.A. 94-623, eff. 8-18-05.)

13 (220 ILCS 50/2.6)

14 Sec. 2.6. Emergency locate request. "Emergency locate
15 request" means a locate request for any condition constituting
16 an imminent danger to life, health, or property, or a utility
17 service outage, and which requires immediate repair or action
18 before the expiration of 48 hours.

19 (Source: P.A. 92-179, eff. 7-1-02.)

20 (220 ILCS 50/2.12 new)

21 Sec. 2.12. Joint meet. "Joint meet" means (i) a meeting
22 scheduled through the State-Wide One-Call Notice System for
23 excavators, owners or operators of underground utility
24 facilities, utility facility locators, or other necessary

1 parties to discuss a large or complicated excavation and an
2 opportunity to exchange information, such as maps, plans, or
3 schedules and (ii) a request processed through the State-Wide
4 One-Call Notice System to have facility owners or operators
5 pick up maps, plans, or schedules.

6 (220 ILCS 50/2.13 new)

7 Sec. 2.13. No show request. "No show request" means a
8 subsequent notice initiated by an excavator through the
9 State-Wide One-Call Notice System to the owners or operators of
10 underground utility facilities notified in the prior locate
11 request that either failed to mark their facilities or to
12 communicate their non-involvement with the excavation prior to
13 the requested dig start date and time.

14 (220 ILCS 50/2.14 new)

15 Sec. 2.14. Incomplete request. "Incomplete request" means
16 a subsequent notice initiated by an excavator through the
17 State-Wide One-Call Notice System to the owners or operators of
18 underground utility facilities, notified in a prior locate
19 request, that such facility owners or operators, as identified
20 by the person excavating, did not completely mark the entire
21 extent or the entire segment of the proposed excavation, as
22 identified by the excavator in the prior notice.

23 (220 ILCS 50/2.15 new)

1 Sec. 2.15. Re-mark request. "Re-mark request" means a
2 subsequent notice initiated by an excavator through the
3 State-Wide One-Call Notice System to the owners or operators of
4 underground utility facilities, notified in the initial locate
5 request, requesting facility owners or operators to re-mark all
6 or part of the work area identified in the initial locate
7 request, because facility markings are becoming or have become
8 indistinguishable due to factors, including, but not limited
9 to, weather, fading, construction activity, or vandalism.

10 (220 ILCS 50/2.16 new)

11 Sec. 2.16. Residential property owner. "Residential
12 property owner" means any individual or entity that owns or
13 leases real property, which property is zoned residential and
14 used by such individual or entity as its residence or dwelling.
15 Residential property owner does not include any persons who own
16 or lease residential property for the purpose of holding or
17 developing such property or for any other business or
18 commercial purposes.

19 (220 ILCS 50/2.17 new)

20 Sec. 2.17. Designer. "Designer" means any person involved
21 in the preparation of plans for a construction or improvement
22 project, which may require excavation or demolition, and who
23 has been registered to utilize the design stage request process
24 through the State-Wide One-Call Notice System.

1 (220 ILCS 50/2.18 new)

2 Sec. 2.18. Design stage request. "Design stage request"
3 means a request for the approximate location of underground
4 utility facilities by a designer who is in the design stage of
5 a project and excavation is not intended in the immediate
6 future.

7 (220 ILCS 50/2.19 new)

8 Sec. 2.19. JULIE Excavator Manual. "JULIE Excavator
9 Manual" means the handbook periodically updated and published
10 by the State-Wide One-Call Notice System that provides
11 information for excavators and facility owners and operators on
12 the use and services of the State-Wide One-Call Notice System.

13 (220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

14 Sec. 4. Required activities. Every person who engages in
15 nonemergency excavation or demolition shall:

16 (a) take reasonable action to inform himself of the
17 location of any underground utility facilities ~~or CATS~~
18 ~~facilities~~ in and near the area for which such operation is
19 to be conducted;

20 (b) plan the excavation or demolition to avoid or
21 minimize interference with underground utility facilities
22 ~~or CATS facilities~~ within the tolerance zone by utilizing
23 such precautions that include, but are not limited to, hand

1 excavation, vacuum excavation methods, and visually
2 inspecting the excavation while in progress until clear of
3 the existing marked facility;

4 (c) if practical, use white paint, flags, stakes, or
5 both, to outline the dig site;

6 (d) provide notice not less than 48 hours but no more
7 than 14 calendar days in advance of the start of the
8 excavation or demolition to the owners or operators of the
9 underground utility facilities ~~or CATS facilities~~ in and
10 near the excavation or demolition area through the
11 State-Wide One-Call Notice System or, in the case of
12 nonemergency excavation or demolition within the
13 boundaries of a municipality of at least one million
14 persons which operates its own one-call notice system,
15 through the one-call notice system which operates in that
16 municipality;

17 (e) provide, during and following excavation or
18 demolition, such support for existing underground utility
19 facilities ~~or CATS facilities~~ in and near the excavation or
20 demolition area as may be reasonably necessary for the
21 protection of such facilities unless otherwise agreed to by
22 the owner or operator of the underground facility ~~or CATS~~
23 ~~facility~~;

24 (f) backfill all excavations in such manner and with
25 such materials as may be reasonably necessary for the
26 protection of existing underground utility facilities ~~or~~

1 ~~CATS facilities~~ in and near the excavation or demolition
2 area; ~~and~~

3 (g) after ~~After~~ February 29, 2004, when the excavation
4 or demolition project will extend past 28 calendar days
5 from the date of the original notice provided under clause
6 (d), the excavator shall provide a subsequent notice to the
7 owners or operators of the underground utility facilities
8 or ~~CATS facilities~~ in and near the excavation or demolition
9 area through the State-Wide One-Call Notice System or, in
10 the case of excavation or demolition within the boundaries
11 of a municipality having a population of at least 1,000,000
12 inhabitants that operates its own one-call notice system,
13 through the one-call notice system that operates in that
14 municipality informing utility owners and operators that
15 additional time to complete the excavation or demolition
16 project will be required. The notice will provide the
17 excavator with an additional 28 calendar days from the date
18 of the subsequent notification to continue or complete the
19 excavation or demolition project. ~~;~~

20 (h) exercise due care at all times to protect
21 underground utility facilities. If, after proper
22 notification through the State-Wide One-Call Notice System
23 and upon arrival at the site of a the proposed excavation,
24 the excavator observes clear evidence of the presence of an
25 unmarked or incompletely marked utility in the area of the
26 proposed excavation, the excavator shall not begin

1 excavating until all affected facilities have been marked
2 or 2 hours after an additional call is made to the
3 State-Wide One-Call Notice System for the area. The owner
4 or operator of the utility shall respond within 2 hours of
5 the excavator's call to the State-Wide One-Call Notice
6 System; and

7 (i) when factors, including, but not limited to,
8 weather, construction activity, or vandalism, at the
9 excavation site have caused the utility markings to become
10 faded or indistinguishable, the excavator shall provide an
11 additional notice through the State-Wide One-Call Notice
12 System requesting that only the affected areas where
13 excavation or demolition is to continue be re-marked.
14 Facility owners or operators must respond to the notice to
15 re-mark according to the requirements of Section 10 of this
16 Act.

17 ~~At a minimum, the notice required under clause (d) shall~~
18 ~~provide:~~

19 ~~(1) the person's name, address, and (i) phone number at~~
20 ~~which a person can be reached and (ii) fax number, if~~
21 ~~available;~~

22 ~~(2) the start date of the planned excavation or~~
23 ~~demolition;~~

24 ~~(3) the address at which the excavation or demolition~~
25 ~~will take place;~~

26 ~~(4) the type and extent of the work involved; and~~

1 ~~(5) section/quarter sections when the above~~
2 ~~information does not allow the State Wide One-Call Notice~~
3 ~~System to determine the appropriate geographic~~
4 ~~section/quarter sections. This item (5) does not apply to~~
5 ~~residential property owners.~~

6 Nothing in this Section prohibits the use of any method of
7 excavation if conducted in a manner that would avoid
8 interference with underground utility facilities ~~or CATS~~
9 ~~facilities.~~

10 (Source: P.A. 93-430, eff. 8-5-03; 94-623, eff. 8-18-05.)

11 (220 ILCS 50/4.1 new)

12 Sec. 4.1. Use of joint meet.

13 (a) If a person engaged in excavation elects to use a joint
14 meet, the joint meet requires a minimum of 48 hours' advance
15 notice. After a joint meet, the owners or operators of
16 underground utility facilities must respond within 48 hours or
17 by the date and time agreed to in writing at the joint meet,
18 whichever is later.

19 At a minimum, the information required to be given to the
20 State-Wide One-Call Notice System at the time the joint meet is
21 requested shall include the following:

22 (1) the requester's name, address, phone number at
23 which a person can be reached, and fax number, if
24 available;

25 (2) the start date and time of the joint meeting;

1 (3) the address at which the joint meet will take
2 place;

3 (4) the type of work involved;

4 (5) all counties, cities, or townships where the
5 proposed excavation shall take place; and

6 (6) the street names involved in the project; or the
7 north, south, east, and west boundaries of the project; or
8 the section or quarter sections, or both, of the project.

9 (b) Persons using the joint meet process are encouraged to
10 the refer to the JULIE Excavator Manual for additional
11 information on the use of a joint meet request.

12 (220 ILCS 50/4.2 new)

13 Sec. 4.2. Design stage request.

14 (a) Persons desiring to utilize the design stage request
15 process are required to complete and submit the "Design Stage
16 Registration Form & Confidentiality Agreement" through the
17 State-Wide One-Call Notice System prior to initiating a design
18 stage request.

19 (b) In connection with any design stage request, designers
20 shall comply with the following:

21 (1) Follow the guidelines set forth in CJIASCE 3 8-02,
22 also known as the "Standard Guidelines for the Collection
23 and Depiction of Existing Subsurface Utility Data".

24 (2) Make a reasonable effort to prepare the
25 construction drawings to minimize interference with

1 existing and proposed underground utility facilities in
2 the construction area.

3 (3) Provide the following information to the State Wide
4 One-Call Notice System at the time of the design stage
5 request:

6 (A) the name, address, and telephone number,
7 either office or cell, of the person making the
8 request;

9 (B) the name, address, and telephone number of the
10 business requesting the facility location information;

11 (C) the approximate date when the facility
12 information is required;

13 (D) the type and extent of the informational
14 request;

15 (E) the location of the required facility
16 information, specified as follows:

17 (i) a specific street or rural address, which
18 has a numbered address on a marked street or avenue
19 that is publicly recorded; or

20 (ii) latitude and longitude coordinates or a
21 specific quarter section by tier, range, section,
22 and quarter section; and

23 (F) the reason for requesting the facility data.

24 (4) Provide site-specific information to qualified
25 bidders of the project

26 (c) Designers are encouraged to refer to the JULIE

1 Excavator Manual for other information prior to initiating a
2 design stage request.

3 (220 ILCS 50/4.3 new)

4 Sec. 4.3. Design stage request response. The State-Wide
5 One-Call Notice System shall provide designers with
6 engineering contact information for the owners or operators in
7 the area of the design stage projects. Owners or operators
8 shall respond to a design stage request upon notification by
9 the designer to the State Wide One-Call Notification System of
10 a design stage request. The facility owner or operator shall
11 provide information regarding the location and type of
12 facilities at the site based on the best information currently
13 available to the facility owner or operator.

14 (220 ILCS 50/4.4 new)

15 Sec. 4.4. Contact is made. After contact is made with the
16 owner or operator by the designer, the owner or operator shall
17 respond in one of the following 3 ways within 15 working days,
18 excluding Saturdays, Sundays, and holidays:

19 (1) actual field location shall be performed at the job
20 site;

21 (2) drawings or prints, or both, of the location of the
22 buried facilities at the proposed site shall be provided;

23 or

24 (3) the designer may be requested to send drawings or

1 prints. or both, of the job site to the member.

2 (220 ILCS 50/4.5 new)

3 Sec. 4.5. Owner or operator request. If the owner or
4 operator requests drawings of the job site, then the owner or
5 operator shall mark existing facilities on drawings or prints,
6 or both, or provide copies of the facility owner's record
7 information and return the documents to the designer.

8 (220 ILCS 50/6) (from Ch. 111 2/3, par. 1606)

9 Sec. 6. Emergency excavation or demolition.

10 (a) Every person who engages in emergency excavation or
11 demolition outside of the boundaries of a municipality of at
12 least one million persons which operates its own one-call
13 notice system shall take all reasonable precautions to avoid or
14 minimize interference between the emergency work and existing
15 underground utility facilities ~~or CATS facilities~~ in and near
16 the excavation or demolition area, through the State-Wide
17 One-Call Notice System, and shall notify, as far in advance as
18 possible, the owners or operators of such underground utility
19 facilities ~~or CATS facilities~~ in and near the emergency
20 excavation or demolition area, through the State-Wide One-Call
21 Notice System. At a minimum, the notice required under this
22 subsection (a) shall provide:

23 (1) the person's name, address, and (i) phone number at
24 which a person can be reached and (ii) fax number, if

1 available;

2 (2) the start date of the planned emergency excavation
3 or demolition;

4 (3) the address at which the excavation or demolition
5 will take place; and

6 (4) the type and extent of the work involved.

7 There is a wait time of 2 hours or the date and time
8 requested on the notice, whichever is longer, after an
9 emergency locate notification request is made through the
10 State-Wide One-Call Notice System. If the conditions at the
11 site dictate an earlier start than the required wait time, it
12 is the responsibility of the excavator to demonstrate that site
13 conditions warranted this earlier start time.

14 Upon notice by the person engaged in emergency excavation
15 or demolition, the owner or operator of an underground utility
16 facility ~~or CATS facility~~ in or near the excavation or
17 demolition area shall communicate with the person engaged in
18 emergency excavation or demolition within 2 hours or by the
19 date and time requested on the notice, whichever is longer by
20 (1) marking the appropriate location of underground
21 facilities; (2) advising the person excavating that their
22 underground facilities are not in conflict with the emergency
23 excavation; or (3) notifying the person excavating that the
24 owner or operator shall be delayed in marking because of
25 conditions as referenced in subsection (g) of Section 11 of
26 this Act.

1 The notice by the owner or operator to the person engaged
2 in emergency excavation or demolition may be provided by phone
3 or phone message or by marking the excavation or demolition
4 area. The owner or operator has discharged the owner's or
5 operator's obligation to provide notice under this Section if
6 the owner or operator attempts to provide notice by telephone
7 but is unable to do so because the person engaged in the
8 emergency excavation or demolition does not answer his or her
9 telephone or does not have an answering machine or answering
10 service to receive the telephone call. If the owner or operator
11 attempts to provide notice by telephone or by facsimile but
12 receives a busy signal, that attempt shall not discharge the
13 owner or operator from the obligation to provide notice under
14 this Section.

15 (b) Every person who engages in emergency excavation or
16 demolition within the boundaries of a municipality of at least
17 one million persons which operates its own one-call notice
18 system shall take all reasonable precautions to avoid or
19 minimize interference between the emergency work and existing
20 underground utility facilities ~~or CATS facilities~~ in and near
21 the excavation or demolition area, through the municipality's
22 one-call notice system, and shall notify, as far in advance as
23 possible, the owners and operators of underground utility
24 facilities ~~or CATS facilities~~ in and near the emergency
25 excavation or demolition area, through the municipality's
26 one-call notice system.

1 (c) The reinstallation of traffic control devices shall be
2 deemed an emergency for purposes of this Section.

3 (d) An open cut utility locate shall be deemed an emergency
4 for purposes of this Section.

5 (Source: P.A. 94-623, eff. 8-18-05.)

6 (220 ILCS 50/7) (from Ch. 111 2/3, par. 1607)

7 Sec. 7. Damage or dislocation. In the event of any damage
8 to or dislocation of any underground utility facilities ~~or CATS~~
9 ~~facilities~~ in connection with any excavation or demolition,
10 emergency or nonemergency, the person responsible for the
11 excavation or demolition operations shall immediately cease in
12 the area of the damage when the damaged facility is a threat to
13 life or property or if otherwise required by law and notify the
14 affected utility and the State-Wide One-Call Notice System or,
15 in the case of damage or dislocation in connection with any
16 excavation or demolition within the boundaries of a
17 municipality having a population of at least 1,000,000
18 inhabitants that operates its own one-call notice system,
19 notify the affected utility and the one-call notice system that
20 operates in that municipality. The person responsible for the
21 excavation or demolition shall not attempt to repair, clamp, or
22 constrict the damaged utility facility unless directed to do so
23 by the utility facility owner or operator. In the event of a
24 damage to any underground utility facility that results in the
25 escape of any flammable, toxic, or corrosive gas or liquid, the

1 person responsible for the excavation or demolition shall call
2 9-1-1 and notify authorities of the damage. Owners and
3 operators of underground utility facilities that are damaged
4 and the excavator involved shall work in a cooperative and
5 expeditious manner to repair the affected utility.

6 (Source: P.A. 92-179, eff. 7-1-02; 93-430, eff. 8-5-03.)

7 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

8 Sec. 10. Record of notice; marking of facilities. Upon
9 notice by the person engaged in excavation or demolition, the
10 person owning or operating underground utility facilities or
11 CATS facilities in or near the excavation or demolition area
12 shall cause a written record to be made of the notice and shall
13 mark, within 48 hours of receipt of notice or by the requested
14 date and time indicated on the notice, whichever is later,, the
15 approximate locations of such facilities so as to enable the
16 person excavating or demolishing to establish the location of
17 the underground utility facilities ~~or CATS facilities~~. Owners
18 and operators of underground sewer facilities that are located
19 outside the boundaries of a municipality having a population of
20 at least 1,000,000 inhabitants shall be required to respond and
21 mark the approximate location of those sewer facilities when
22 the excavator indicates, in the notice required in Section 4,
23 that the excavation or demolition project will exceed a depth
24 of 7 feet. "Depth", in this case, is defined as the distance
25 measured vertically from the surface of the ground to the top

1 of the sewer facility. Owners and operators of underground
2 sewer facilities that are located outside the boundaries of a
3 municipality having a population of at least 1,000,000
4 inhabitants shall be required at all times to locate the
5 approximate location of those sewer facilities when: (1)
6 directional boring is the indicated type of excavation work
7 being performed within the notice; (2) the underground sewer
8 facilities owned are non-gravity, pressurized force mains; or
9 (3) the excavation indicated will occur in the immediate
10 proximity of known underground sewer facilities that are less
11 than 7 feet deep. Owners or operators of underground sewer
12 facilities that are located outside the boundaries of a
13 municipality having a population of at least 1,000,000
14 inhabitants shall not hold an excavator liable for damages that
15 occur to sewer facilities that were not required to be marked
16 under this Section, provided that prompt notice of the damage
17 is made to the State-Wide One-Call Notice System and the
18 utility owner as required in Section 7.

19 All persons subject to the requirements of this Act shall
20 plan and conduct their work consistent with reasonable business
21 practices. Conditions may exist making it unreasonable to
22 request that locations be marked within 48 hours or by the
23 requested date and time indicated on the notice, whichever is
24 later. It is unreasonable to request owners and operators of
25 underground utility facilities ~~and CATS facilities~~ to locate
26 all of their facilities in an affected area upon short notice

1 in advance of a large or extensive nonemergency project, or to
2 request extensive locates in excess of a reasonable excavation
3 or demolition work schedule, or to request locates under
4 conditions where a repeat request is likely to be made because
5 of the passage of time or adverse job conditions. Owners and
6 operators of underground utility facilities ~~and CATS~~
7 ~~facilities~~ must reasonably anticipate seasonal fluctuations in
8 the number of locate requests and staff accordingly.

9 If a person owning or operating underground utility
10 facilities ~~or CATS facilities~~ receives a notice under this
11 Section but does not own or operate any underground utility
12 facilities or CATS facilities within the proposed excavation or
13 demolition area described in the notice, that person, within 48
14 hours or by the requested date and time indicated on the
15 notice, whichever is later, after receipt of the notice, shall
16 so notify the person engaged in excavation or demolition who
17 initiated the notice, unless the person who initiated the
18 notice expressly waives the right to be notified that no
19 facilities are located within the excavation or demolition
20 area. The notification by the owner or operator of underground
21 utility facilities ~~or CATS facilities~~ to the person engaged in
22 excavation or demolition may be provided in any reasonable
23 manner including, but not limited to, notification in any one
24 of the following ways: by face-to-face communication; by phone
25 or phone message; by facsimile; by posting in the excavation or
26 demolition area; or by marking the excavation or demolition

1 area. The owner or operator of those facilities has discharged
2 the owner's or operator's obligation to provide notice under
3 this Section if the owner or operator attempts to provide
4 notice by telephone or by facsimile, if the person has supplied
5 a facsimile number, but is unable to do so because the person
6 engaged in the excavation or demolition does not answer his or
7 her telephone or does not have an answering machine or
8 answering service to receive the telephone call or does not
9 have a facsimile machine in operation to receive the facsimile
10 transmission. If the owner or operator attempts to provide
11 notice by telephone or by facsimile but receives a busy signal,
12 that attempt shall not serve to discharge the owner or operator
13 of the obligation to provide notice under this Section.

14 A person engaged in excavation or demolition may expressly
15 waive the right to notification from the owner or operator of
16 underground utility facilities ~~or CATS facilities~~ that the
17 owner or operator has no facilities located in the proposed
18 excavation or demolition area. Waiver of notice is only
19 permissible in the case of regular or nonemergency locate
20 requests. The waiver must be made at the time of the notice to
21 the State-Wide One-Call Notice System. A waiver made under this
22 Section is not admissible as evidence in any criminal or civil
23 action that may arise out of, or is in any way related to, the
24 excavation or demolition that is the subject of the waiver.

25 For the purposes of this Act, underground facility
26 operators may utilize a combination of flags, stakes, and paint

1 when possible on non-paved surfaces and when dig site and
 2 seasonal conditions warrant. If the approximate location of an
 3 underground utility facility or CATS facility is marked with
 4 stakes or other physical means, the following color coding
 5 shall be employed:

6 Underground Facility Identification Color

7 Facility Owner or Agent Use Only

8 Electric Power, Distribution and

9 Transmission Safety Red

10 Municipal Electric Systems Safety Red

11 Gas Distribution and Transmission High Visibility Safety
 12 Yellow

13 Oil Distribution and Transmission High Visibility Safety
 14 Yellow

15 Telephone and Telegraph Systems Safety Alert Orange

16 Community Antenna Television Systems .. Safety Alert Orange

17 Water Systems Safety Precaution Blue

18 Sewer Systems Safety Green

19 Non-potable Water and Slurry Lines Safety Purple

20 Excavator Use Only

21 Temporary Survey Safety Pink

1 Proposed Excavation..... Safety White (Black
 2 when snow is on the
 3 ground)

4 (Source: P.A. 93-430, eff. 8-5-03; 94-623, eff. 8-18-05.)

5 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

6 Sec. 11. Penalties; liability; fund.

7 (a) Every person who, while engaging in excavation or
 8 demolition, wilfully fails to comply with the Act by failing to
 9 provide the notice to the owners or operators of the
 10 underground facilities ~~or CATS facility~~ near the excavation or
 11 demolition area through the State-Wide One-Call Notice System
 12 as required by Section 4 or 6 of this Act shall be subject to a
 13 penalty of up to \$5,000 for each separate offense and shall be
 14 liable for the damage caused to the owners or operators of the
 15 facility. Every person who fails to provide notice and
 16 willfully fails to comply with other provisions of this Act
 17 shall be subject to additional penalties of up to \$2,500 for
 18 each separate offense and shall be liable for the damage caused
 19 to the owners or operators of the facility.

20 (b) Every person who, ~~while engaging in excavation or~~
 21 ~~demolition,~~ has provided the notice to the owners or operators
 22 of the underground utility facilities ~~or CATS facilities~~ in and
 23 near the excavation or demolition area through the State-Wide
 24 One-Call Notice System as required by Section 4 or 6 of this
 25 Act, but otherwise wilfully fails to comply with this Act,

1 shall be subject to a penalty of up to \$2,500 for each separate
2 offense and shall be liable for the damage caused to the owners
3 or operators of the facility.

4 (c) Every person who, while engaging in excavation or
5 demolition, has provided the notice to the owners or operators
6 of the underground utility facilities ~~or CATS facilities~~ in and
7 near the excavation or demolition area through the State-Wide
8 One-Call Notice System as required by Section 4 or 6 of this
9 Act, but otherwise, while acting reasonably, damages any
10 underground utility facilities ~~or CATS facilities~~, shall not be
11 subject to a penalty, but shall be liable for the damage caused
12 to the owners or operators of the facility provided the
13 underground utility facility or CATS facility is properly
14 marked as provided in Section 10 of this Act.

15 (d) Every person who, ~~while engaging in excavation or~~
16 ~~demolition~~, provides notice to the owners or operators of the
17 underground utility facilities ~~or CATS facilities~~ through the
18 State-Wide One-Call Notice System as an emergency locate
19 request and the locate request is not an emergency locate
20 request as defined in Section 2.6 of this Act shall be subject
21 to a penalty of up to \$2,500 for each separate offense.

22 (e) Owners and operators of underground utility facilities
23 who willfully fail to comply with this Act by a failure to
24 respond or mark the approximate location of an underground
25 utility as required by subsection (h) of Section 4, subsection
26 (a) of Section 6, or Section 10 of this Act after being

1 notified of planned excavation or demolition through the
2 State-Wide One-Call Notice System, shall be subject to a
3 penalty of up to \$5,000 for each separate offense. ~~Owners and~~
4 ~~operators of underground utility facilities or CATS facilities~~
5 ~~(i) who wilfully fail to comply with this Act by a failure to~~
6 ~~mark the location of an underground utility or CATS facility or~~
7 ~~a failure to provide notice that facilities are not within the~~
8 ~~proposed excavation or demolition area as required in Section~~
9 ~~10, or (ii) who willfully fail to respond as required in~~
10 ~~Section 6 to an emergency request, after being notified of~~
11 ~~planned excavation or demolition through the State-Wide~~
12 ~~One-Call Notice System, shall be subject to a penalty of up to~~
13 ~~\$5,000 for each separate offense resulting from the failure to~~
14 ~~mark an underground utility facility or CATS facility.~~

15 (f) As provided in Section 3 of this Act, all owners or
16 operators of underground utility facilities ~~or CATS facilities~~
17 who fail to join the State-Wide One-Call Notice System by
18 January 1, 2003 shall be subject to a penalty of \$100 per day
19 for each separate offense. Every day an owner or operator fails
20 to join the State-Wide One-Call Notice System is a separate
21 offense. This subsection (f) does not apply to utilities
22 operating facilities ~~or CATS facilities~~ exclusively within the
23 boundaries of a municipality with a population of at least
24 1,000,000 persons.

25 (g) No owner or operator of underground utility facilities
26 ~~or CATS facilities~~ shall be subject to a penalty where a delay

1 in marking or a failure to mark or properly mark the location
2 of an underground utility ~~or CATS facility~~ is caused by
3 conditions beyond the reasonable control of such owner or
4 operator.

5 (h) Any person who is neither an agent, employee, or
6 authorized locating contractor of the owner or operator of the
7 underground utility facility ~~or CATS facility~~ nor an excavator
8 involved in the excavation activity who removes, alters, or
9 otherwise damages markings, flags, or stakes used to mark the
10 location of an underground utility ~~or CATS facility~~ other than
11 during the course of the excavation for which the markings were
12 made or before completion of the project shall be subject to a
13 penalty up to \$1,000 for each separate offense.

14 (i) (Blank). ~~The excavator shall exercise due care at all~~
15 ~~times to protect underground utility facilities and CATS~~
16 ~~facilities. If, after proper notification through the~~
17 ~~State Wide One Call Notice System and upon arrival at the site~~
18 ~~of a proposed excavation, the excavator observes clear evidence~~
19 ~~of the presence of an unmarked utility or CATS facility in the~~
20 ~~area of the proposed excavation, the excavator shall not begin~~
21 ~~excavating until 2 hours after an additional call is made to~~
22 ~~the State Wide One Call Notice System for the area. The~~
23 ~~operator of the utility or CATS facility shall respond within 2~~
24 ~~hours of the excavator's call to the State Wide One Call Notice~~
25 ~~System.~~

26 (j) The Illinois Commerce Commission shall have the power

1 and jurisdiction to, and shall, enforce the provisions of this
2 Act. The Illinois Commerce Commission may impose
3 administrative penalties as provided in this Section. The
4 Illinois Commerce Commission may promulgate rules and develop
5 enforcement policies in the manner provided by the Public
6 Utilities Act in order to implement compliance with this Act.
7 When a penalty is warranted, the following criteria shall be
8 used in determining the magnitude of the penalty:

9 (1) gravity of noncompliance;

10 (2) culpability of offender;

11 (3) history of noncompliance for the 18 months prior to
12 the date of the incident; however, when determining
13 non-compliance the alleged violator's role as operator or
14 owner and the person engaged in excavating shall be treated
15 separately;

16 (4) ability to pay penalty;

17 (5) show of good faith of offender;

18 (6) ability to continue business; and

19 (7) other special circumstances.

20 (k) There is hereby created in the State treasury a special
21 fund to be known as the Illinois Underground Utility Facilities
22 Damage Prevention Fund. All penalties recovered in any action
23 under this Section shall be paid into the Fund and shall be
24 distributed annually as a grant to the State-Wide One-Call
25 Notice System to be used in safety and informational programs
26 to reduce the number of incidents of damage to underground

1 utility facilities and CATS facilities in Illinois. The
2 distribution shall be made during January of each calendar year
3 based on the balance in the Illinois Underground Utility
4 Facilities Damage Prevention Fund as of December 31 of the
5 previous calendar year. In all such actions under this Section,
6 the procedure and rules of evidence shall conform with the Code
7 of Civil Procedure, and with rules of courts governing civil
8 trials.

9 (l) The Illinois Commerce Commission shall establish an
10 Advisory Committee consisting of a representative from each of
11 the following: utility operator, JULIE, excavator,
12 municipality, and the general public. The Advisory Committee
13 shall serve as a peer review panel for any contested penalties
14 resulting from the enforcement of this Act.

15 The members of the Advisory Committee shall be immune,
16 individually and jointly, from civil liability for any act or
17 omission done or made in performance of their duties while
18 serving as members of such Advisory Committee, unless the act
19 or omission was the result of willful and wanton misconduct.

20 (m) If, after the Advisory Committee has considered a
21 particular contested penalty and performed its review
22 functions under this Act and the Commission's rules, there
23 remains a dispute as to whether the Commission should impose a
24 penalty under this Act, the matter shall proceed in the manner
25 set forth in Article X of the Public Utilities Act, including
26 the provisions governing judicial review.

1 (Source: P.A. 94-623, eff. 8-18-05.)

1		INDEX
2		Statutes amended in order of appearance
3	220 ILCS 50/2.1	from Ch. 111 2/3, par. 1602.1
4	220 ILCS 50/2.2	from Ch. 111 2/3, par. 1602.2
5	220 ILCS 50/2.6	
6	220 ILCS 50/2.12 new	
7	220 ILCS 50/2.13 new	
8	220 ILCS 50/2.14 new	
9	220 ILCS 50/2.15 new	
10	220 ILCS 50/2.16 new	
11	220 ILCS 50/2.17 new	
12	220 ILCS 50/2.18 new	
13	220 ILCS 50/2.19 new	
14	220 ILCS 50/4	from Ch. 111 2/3, par. 1604
15	220 ILCS 50/4.1 new	
16	220 ILCS 50/4.2 new	
17	220 ILCS 50/4.3 new	
18	220 ILCS 50/4.4 new	
19	220 ILCS 50/4.5 new	
20	220 ILCS 50/6	from Ch. 111 2/3, par. 1606
21	220 ILCS 50/7	from Ch. 111 2/3, par. 1607
22	220 ILCS 50/10	from Ch. 111 2/3, par. 1610
23	220 ILCS 50/11	from Ch. 111 2/3, par. 1611